

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 330 OF 2007

Subodh S. Salaskar	...Petitioner
V/s.	
Jayprakash M. Shah & Anr.	...Respondents

Mr.Rajendra Singh for the Petitioner.
Mr.Y.S. Shinde, APP for the State.
Mr.B.V. Phadnis with Mr.Jayant Gaikwad for Respondent
No.1.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 19, 2007

P.C. :-

. Heard the learned Counsel for the petitioner and
the learned Counsel for respondent no.1.

2. The petitioner is challenging the order of
issuance of process by the trial Court on a complaint
filed by the respondent Section 138 of the Cr.P.C.

3. It is submitted by the learned Counsel for the
petitioner that after having realised that there was
delay in filing the complaint, an application was made
by the complainant for amendment of the complaint and
for including of an offence punishable under Section
420. The said amendment application was allowed.

Against this order and the application for discharge which was filed by the petitioner and which was rejected by the Magistrate, the petitioner filed revision application in the Sessions Court. This revision application also has been dismissed. Being aggrieved by the aforesaid order, the petitioner has filed this Criminal Writ Petition challenging the order of issuance of process by the Magistrate under Section 138 as also under Section 420 of the IPC. In support of the said submission, the learned Counsel for the petitioner has relied on a judgment of the Andhra Pradesh High Court in a case of **Smt.Villa Naga Lakshmi vs. Mutta Srinivasa Rao & Anr.**, reported in 2007 ALL MR (Cri) Journal 104.

4. It is not possible to accept the submission made by the learned Counsel for the petitioner. The question whether there is a delay in filing the complaint is a mixed question of fact and law and as such, cannot be decided initially at the stage of issuance of process. Even otherwise, as a result of amendment of Section 142 sub-clause (b) of the Negotiable Instruments Act, even if delay is caused in filing the complaint, the

Magistrate has power to condone the delay. It is a well settled position in law that whenever amendment is made to the statute which results in a change in the procedural law, such an amendment shall have retrospective application. It is only when an amendment is made in a provision which has an effect of change in the substantive law, such amendment shall have retrospective application if it changes the substantive rights between the parties and as such, therefore, the provisions of Article 20 subclause 1 are not violated as a result of the said amendment. The submission of the petitioner that on account of delay, therefore, complaint is not maintainable, cannot be accepted. It is always open for the complainant to apply for condonation of delay and if such an application is made, the Magistrate may consider the application on merits and in accordance in law. The reliance which is placed by the learned Counsel for the petitioner on the judgment in the case of **Smt.Villa Naga Lakshmi (supra)**, in my view, will not apply to the facts of the present case. In any case, I respectfully defer with the view taken by the learned Judge of the Andhra Pradesh High

Court.

5. The next submission which was made by the petitioner was that no averment is made in respect of the complaint regarding the offence under Section 420 of the IPC. The learned Counsel for respondent no.1, on the other hand, has pointed out that the averments which are made in the complaint which according to him constitute an offence punishable under Section 420. He pointed out that it is specifically averred in the complaint that the accused had asked the complainant to deposit the said cheque and when the said cheque was deposited, the Bank Memo disclosed that the account in the said bank is not in operation.

6. The learned Counsel for respondent no.1 submitted therefore that the accused knew very well that the account had been closed and yet asked the complainant to deposit the cheque and therefore, this constituted an averment in respect of ingredient of the offence punishable under Section 420. In view of this, the submission made by the petitioner also on this count

cannot be accepted.

7. It appears that an application was made by the complainant for amendment of the complaint and the said application was allowed and the complainant was permitted to add the provisions of Section 420 in the complaint. In my view, prima facie that such an application could not have been allowed as there is no provision in the Cr.P.C. whereby such amendment can be permitted. Even otherwise, if this amendment had not been allowed, perusal of the complaint discloses sufficient averment in the complaint and therefore, the trial Court was justified in issuing process under Section 420. In any case, at this stage, it will not be possible to interfere with the order of issuance of process.

8. All questions raised by both the parties are kept open. The trial Court shall not be influenced by the observation made while disposing of this petition and shall decide the criminal case, as expeditiously as possible and in any case, within a period of six months.

. Application is dismissed.

(V.M. KANADE, J.)